

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ESTELLE McGECHIE,

Plaintiff,

v.

ATOMOS LIMITED and ATOMOS,  
INC.,

Defendants.

No. 2:22-cv-01812-DJC-DB

ORDER

Plaintiff brings the present suit against her former employer alleging discrimination, retaliation, and wrongful termination. Before the Court are Defendant Atomos Limited's Motions to Dismiss for lack of Personal Jurisdiction and Forum Non Conveniens in which Defendants assert that this Court cannot exercise personal jurisdiction over Defendant, and that Australia is the proper forum for Plaintiff's suit. Defendant Atomos, Inc. has joined the Motion to Dismiss for Forum Non Conveniens, but has not challenged personal jurisdiction. For the reasons below, the Court DENIES both motions and will retain jurisdiction over the case.<sup>1</sup>

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<sup>1</sup> Defendants have also filed a Motion to Stay pending decision on the Motions to Dismiss. (Mot. to Stay (ECF No. 34).) Because the Court has now resolved these motions, the Motion to Stay is DENIED as moot.

1       **I.     Background**

2       **A. Factual Background**

3       Plaintiff Estelle McGechie brings the present suit alleging that during her  
4       employment with Defendants Atomos Limited and Atomos, Inc., she was subject to  
5       discrimination based on her gender, and was retaliated against and wrongfully  
6       terminated for engaging in whistleblowing activity and reporting discrimination. (First  
7       Am. Compl. ("FAC") (ECF No. 23) ¶¶ 1-5.) Defendant Atomos Limited is an Australian  
8       based technology company, and Defendant Atomos, Inc., a wholly owned subsidiary  
9       of Atomos Limited, is an Oregon based company. (*Id.* ¶¶ 7-8, 11.)

10       Plaintiff was employed by Defendants from approximately March 2021 through  
11       her termination in April 2022. (*Id.* ¶¶ 29, 76, 81-82.) She began as an independent  
12       contractor and was then hired as the Chief Product Officer ("CPO") in June 2021. (*Id.*  
13       ¶ 29.) In September 2021, Plaintiff became the Chief Executive Officer ("CEO") of  
14       Atomos. (*Id.* ¶ 40.) During her employment as an independent contractor and as  
15       CPO, Plaintiff worked remotely from her home in Truckee, California. When Plaintiff  
16       accepted the position as CEO, she agreed to eventually relocate to Melbourne,  
17       Australia, Atomos's headquarters. (*Id.* ¶¶ 82, 7; Mot. to Dismiss for Lack of Personal  
18       Jurisdiction ("MTD 1") (ECF No. 6), Ex. A at 20, 29.) However, due to Covid-19 travel  
19       restrictions, the Parties agreed that Plaintiff would not begin working from Australia  
20       until at least January 2022, and would continue Plaintiff's same employment  
21       arrangements allowing her to work in California until her relocation. (MTD 2, Ex. A at  
22       20.) Defendants furnished Plaintiff's home office in California, provided her with a  
23       California cost-of-living wage adjustment, paid her in California, and withheld  
24       California employment taxes. (FAC ¶ 30.) Plaintiff did not move to Australia during  
25       her employment, and was employed by Defendants exclusively in California for her  
26       entire tenure. (FAC ¶¶ 6, 14-15, 82.)

27       Plaintiff alleges that she was recruited by Defendants because of her  
28       experience and business connections in the Silicon Valley technology industry. (*Id.*

1 ¶¶ 27-29.) The then-CEO of Atomos Limited recruited Plaintiff through both remote  
2 and in-person meetings, including by travelling to and staying at Plaintiff's home for a  
3 week. (Decl. of Estelle McGechie ("McGechie Decl.") (ECF No. 7-1) ¶¶ 1-2.) While she  
4 was CEO, Plaintiff leveraged her experience and connections to create business  
5 relationships with California-based companies, and to recruit and hire multiple  
6 California-based employees. (*Id.* ¶¶ 8-12; FAC ¶¶ 15-18, 29.) While Plaintiff primarily  
7 worked remotely from her home office in Truckee, California, Plaintiff asserts that she  
8 regularly worked with California employees based in Defendants' Los Angeles,  
9 California office both remotely and in person. (McGechie Decl. ¶ 8.)

10       Shortly after she began working as CEO, Plaintiff alleges that she was met with  
11 resistance and condescension from members of the all-male executive board, and was  
12 otherwise subject to less favorable terms of employment than her male predecessor,  
13 including lesser pay. (*Id.* ¶¶ 41-51.) Plaintiff alleges that she raised complaints, but  
14 the discrimination was not addressed. (*Id.* ¶¶ 50-51.) Plaintiff further alleges that as  
15 CEO she became aware of, and raised concerns about, potentially illegal activity  
16 Atomos was engaged in, including "channel stuffing" and insider trading. (*Id.* ¶¶ 54-  
17 75.) Plaintiff alleges that Atomos terminated her in retaliation for her whistleblowing  
18 activity and for reporting discrimination. (*Id.* ¶¶ 76-82.) She brings the present action  
19 alleging violations of California law including gender discrimination and retaliation in  
20 violation of California Government Code § 12940(a); retaliation in violation of  
21 California Labor Code § 1102.5; and wrongful termination in violation of public policy.  
22 (*Id.* ¶¶ 87-112.)

23           **B. Procedural Background**

24       Plaintiff originally filed this suit in California Superior Court, Nevada County.  
25 (Not. of Removal (ECF No. 1).) Defendant Atomos Limited subsequently removed the  
26 suit to this court on October 1, 2022. (*Id.*) Shortly after, Defendant Atomos Limited  
27 filed the present Motions to Dismiss (MTD 1; Mot. to Dismiss for Forum Non  
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1 Conveniens ("MTD 2") (ECF No. 11)), which Plaintiff has opposed (Opp'n to MTD 1  
2 (ECF No. 7); Opp'n to MTD 2 (ECF No. 15)).

3       Upon stipulation of the Parties, Plaintiff filed the First Amended Complaint  
4 which (1) added Atomos Inc. as a party, including allegations that Defendants are alter  
5 egos of each other, and (2) fixed a formatting error in paragraph 27. (See Motion to  
6 Amend Complaint (ECF No. 16); Stipulation (ECF No. 21); FAC.) Plaintiff did not  
7 otherwise make substantive changes to the Complaint which would alter the  
8 arguments presented in the Motions to Dismiss and require refiling. To the extent that  
9 the addition of Defendant Atomos, Inc. effects the Motion to Dismiss for Forum Non  
10 Conveniens, the Parties have provided additional briefing. After being added to this  
11 suit, Defendant Atomos, Inc. joined Defendant Atomos Limited's Motion to Dismiss for  
12 Forum Non Conveniens. (ECF No. 25.) Defendants filed a Reply after the joinder of  
13 Defendant Atomos, Inc. (ECF No. 26), and Plaintiff filed a Sur-Reply (ECF No. 33).

14       After this case was reassigned to this Court, Defendants filed a Motion to Stay  
15 pending decision on the Motions to Dismiss. (Mot. to Stay (ECF No. 34).) The Court  
16 on its own motion, and pursuant to Local Rule 230(g), set a hearing for all three  
17 pending motions on February 29, 2024. The Court held the hearing with Michelle Lee  
18 appearing for Plaintiff and Hieu Williams appearing for Defendants. The Court orally  
19 denied both Motions to Dismiss (ECF No. 41) with a written order to subsequently  
20 issue.

21       **II. Motion to Dismiss for Lack of Personal Jurisdiction**

22           **A. Legal Standard**

23       Rule 12(b)(2) allows a party to assert lack of personal jurisdiction as a defense,  
24 and request dismissal of the suit. Fed. R. Civ. P. (12)(b)(2). "Although the defendant is  
25 the moving party on a motion to dismiss [for lack of personal jurisdiction], the plaintiff  
26 bears the burden of establishing that jurisdiction exists." *Rio Props., Inc. v. Rio Int'l/*  
27 *Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002). "[I]n the absence of an evidentiary  
28 hearing, the plaintiff need only make 'a prima facie showing of jurisdictional facts to

1 withstand the motion to dismiss.” *Brayton Purcell LLP v. Recordon & Recordon*, 606  
2 F.3d 1124, 1127 (9th Cir. 2010) (quoting *Pebble Beach Co. v. Caddy*, 453 F.3d 1151,  
3 1154 (9th Cir. 2006)). “In evaluating the appropriateness of personal jurisdiction over  
4 a nonresident defendant, [courts] ordinarily examine whether such jurisdiction  
5 satisfies the ‘requirements of the applicable state long-arm statute’ and ‘comports with  
6 federal due process.’” *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 919 (9th Cir.  
7 2011), *rev'd on other grounds sub nom. Daimler AG v. Bauman*, 571 U.S. 117 (2014)  
8 (quoting *Chan v. Soc'y Expeditions, Inc.*, 39 F.3d 1398, 1404-05 (9th Cir. 1994)).

9       “The court may consider evidence presented in affidavits to assist it in its  
10 determination and may order discovery on the jurisdictional issues.” *Doe v. Unocal*  
11 *Corp.*, 248 F.3d 915, 922 (9th Cir. 2001), *abrogated on other grounds by Daimler*, 571  
12 U.S. at 126 (citing *Data Disc, Inc. v. Systems Technology Assoc., Inc.*, 557 F.2d 1280,  
13 1285 (9th Cir. 1977)). When a district court does not hold an evidentiary hearing on  
14 the discovery materials and affidavits relied upon, “the plaintiff need make only a  
15 *prima facie* showing of jurisdictional facts to withstand the motion to dismiss.” *Ballard*  
16 *v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995); see also *AT & T v. Compagnie Bruxelles*  
17 *Lambert*, 94 F.3d 586, 588 (9th Cir. 1996). Plaintiff’s facts are taken as true for the  
18 purposes of a 12(b)(2) motion to dismiss, and any “conflicts between the facts  
19 contained in the parties’ affidavits must be resolved in [plaintiffs’] favor for purposes of  
20 deciding whether a *prima facie* case for personal jurisdiction exists.” *AT & T*, 94 F.3d  
21 at 588 (citations omitted).

22           **B. Discussion**

23       California’s long arm statute allows the exercise of personal jurisdiction to the  
24 extent allowed by the U.S. Constitution. Cal. Code Civ. Proc. § 410.10. Accordingly,  
25 the Court need only assess whether the exercise of jurisdiction in this case comports  
26 with due process.

27       Courts may have general or specific jurisdiction over an entity depending on  
28 the nature and extent of that entity’s contact with the forum state. A court may

1 exercise general jurisdiction over a corporation in a state where the corporation is "at  
2 home." A corporation is at home in a state where its "affiliations . . . are so 'continuous  
3 and systematic' as to render [it] essentially at home in the forum State." *Daimler*, 571  
4 U.S. at 119 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915,  
5 919 (2011)). This is generally where the corporation is incorporated and where it  
6 maintains its principal place of business. *Id.* The corporation's "continuous activity of  
7 some sorts within a state is not enough to support the demand that the corporation be  
8 amenable to suits unrelated to that activity." *Int'l Shoe Co. v. State of Wash., Off. of  
9 Unemployment Comp. & Placement*, 326 U.S. 310, 318 (1945). However, courts do  
10 have specific jurisdiction over corporations where there is sufficient contact with the  
11 forum state, and the claims arise out of that contact. *Bristol-Myers Squibb Co. v.  
12 Superior Court*, 582 U.S. 255, 262 (2017) ("[T]here must be an 'affiliation between the  
13 forum and the underlying controversy, principally, [an] activity or an occurrence that  
14 takes place in the forum State and is therefore subject to the State's regulation."  
15 (quoting *Goodyear*, 564 U.S. at 919)). Plaintiff appears to concede that there is no  
16 general jurisdiction over Defendant – which is incorporated and headquartered in  
17 Australia – arguing only that this Court has specific jurisdiction over Defendant.

18 In the Ninth Circuit, specific jurisdiction is determined by a three-prong test:  
19 "(1) the defendant must either 'purposefully direct his activities' toward the forum or  
20 'purposefully avail[ ] himself of the privileges of conducting activities in the forum'; (2)  
21 'the claim must be one which arises out of or relates to the defendant's forum-related  
22 activities'; and (3) 'the exercise of jurisdiction must comport with fair play and  
23 substantial justice, i.e. it must be reasonable.'" *Axiom Foods, Inc. v. Acerchem Int'l,  
24 Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (quoting *Dole Food Co., Inc. v. Watts*,  
25 303 F.3d 1104, 1111 (9th Cir. 2002)). "The plaintiff bears the burden of satisfying the  
26 first two prongs of the test" while the burden of the third prong shifts to defendant.  
27 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

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## i. Purposeful Direction and Availability

2 "To have purposefully availed itself of the privilege of doing business in the  
3 forum, a defendant must have performed some type of affirmative conduct which  
4 allows or promotes the transaction of business within the forum state." *Boschetto v.*  
5 *Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008) (cleaned up). "A showing that a  
6 defendant purposefully availed himself of the privilege of doing business in a forum  
7 state typically consists of evidence of the defendant's actions in the forum, such as  
8 executing or performing a contract there." *Schwarzenegger*, 374 F.3d at 802.  
9 Likewise, purposeful direction involves intentional contact with the state. It is "the  
10 defendant's contacts with the forum State itself, not the defendant's contacts with  
11 persons who reside there" which are relevant to the inquiry. *Walden v. Fiore*, 571 U.S.  
12 277, 285 (2014). The defendant's mere knowledge that the plaintiff resides in the  
13 forum state "will not, on its own, support the exercise of specific jurisdiction." *Axiom*,  
14 874 F.3d at 1070. However, "individualized targeting may remain relevant to the  
15 minimum contacts inquiry," *id.*, as "a defendant's contacts with the forum State may  
16 be intertwined with his transactions or interactions with the plaintiff . . ." *Walden*, 571  
17 U.S. at 286. Only purposeful contacts, and not "random, fortuitous, or attenuated  
18 contacts" will give rise to personal jurisdiction. *Id.*

19        Many courts have found that employing an individual in the forum state,  
20 especially where defendant uses the employee to further its own interests in the state,  
21 constitutes purposeful availment. See *Franey v. Am. Battery Sols. Inc.*, No. 22-CV-  
22 03457-LB, 2022 WL 4280638, at \*6 (N.D. Cal. Sept. 15, 2022) (collecting cases); see,  
23 e.g., *Mewawalla v. Middleman*, 601 F. Supp. 3d 574, 594 (N.D. Cal. 2022) (finding that  
24 defendant had purposefully availed itself of California where it hired plaintiff "to  
25 capitalize on Plaintiff's Silicon Valley connections"); *Mercado v. JMJ Assocs. LLC*, No.  
26 SACV-14-2060-JLS-RNB, 2015 WL 13783452, at \*4 (C.D. Cal. Apr. 15, 2015) (finding  
27 personal jurisdiction where the defendant hired the plaintiff to work in California and  
28 plaintiff built business relationships with California businesses on defendant's behalf).

1       Similarly, courts have found purposeful direction where the defendant employs  
2 the plaintiff in the forum state, and then acts intentionally to support the plaintiff's  
3 employment in the state or commits intentional acts against the plaintiff like  
4 harassment, discrimination, retaliation, or termination. See *Franey*, 2022 WL 4280638  
5 at \*9 (finding purposeful direction where the defendant "support[ed] the plaintiff's  
6 employment in California by providing office supplies, paying travel expenses, and  
7 paying for health insurance" and then retracted her promotion and retaliated against  
8 her); *Mercado*, 2015 WL 13783452, at \*4 (same where employee lived in California  
9 throughout his employment, the defendant issued checks in California and withheld  
10 payroll taxes, and sent the termination letter to plaintiff in California); *Senne v. Kansas*  
11 *City Royals Baseball Corp.*, 105 F. Supp. 3d 981, 1029 (N.D. Cal. 2015) (same where  
12 defendant employed individuals in California and applied an unlawful wage policy).

13       Here, Defendant Atomos Limited<sup>2</sup> purposefully directed its activity at, and  
14 availed itself of, California. Defendant did not only recruit and contract with Plaintiff in  
15 California, as Defendant asserts, but Defendant employed Plaintiff in her capacity as  
16 CEO for nearly 6 months in California. Defendant took proactive steps to support  
17 Plaintiff's employment in California, including agreeing to continue the wage  
18 arrangements that would allow her to continue working in California, issuing checks in  
19 California for work performed in California, and paying California employment taxes.  
20 Plaintiff also claims that Defendant supplied her home office and sent product  
21 prototypes to her in California.

22       In addition, Defendant allegedly conducted business in California through  
23 Plaintiff. Plaintiff alleges that Defendant recruited her specifically because of her  
24 Silicon Valley technology industry connections in California. While she was employed  
25 as the CEO of Atomos, and working exclusively in California, Plaintiff supervised and  
26 recruited multiple Californian employees, and built business relationships, and

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<sup>2</sup> As Defendant Atomos, Inc. has not challenged personal jurisdiction, the Court will only review the  
personal jurisdiction of Defendant Atomos Limited.

1 contracted with California-based companies – all purposeful activities conducted on  
2 behalf of Defendant, which were aimed at California companies and residents, and  
3 from which Defendant directly benefitted. Plaintiff’s conduct while she was CEO is the  
4 mechanism by which Defendant availed itself of the privileges and benefits of doing  
5 business in California.<sup>3</sup>

6 Defendant makes much of the fact that the employment agreement expressed  
7 an intention for the role to eventually be performed in Australia. Defendant relies on  
8 *Selhorst v. Alward Fisheries, LLC*, and *Sarkis v. Lajcak* for the proposition that the  
9 contemplated future consequences of an employment contract govern the inquiry.  
10 See No. C-11-3266 EMC, 2011 WL 4974568, at \*6 (N.D. Cal. Oct. 19, 2011) and 425 F.  
11 App’x 557, 559 (9th Cir. 2011), respectively. Both cases, however, have a key  
12 distinguishing fact: the plaintiff in each case *never performed work in the forum state*.  
13 See *Selhorst*, WL 4974568, at \*6 (the contract stated that work would be performed  
14 “in Alaska only” and the plaintiff never performed work in the forum state); *Sarkis*, 425  
15 Fed. App’x at 599 (“At no time during his employment did Sarkis perform work in  
16 California, nor did his employment contract suggest otherwise.”) The only contact the  
17 defendants had with the forum state were recruiting the plaintiff and negotiating the  
18 contract. Moreover, the Ninth Circuit in *Sarkis* made clear that it is the “actual course  
19 of dealing,” and not exclusively the terms of a contract, which is determinative. 425  
20 Fed. App’x at 599 (emphasizing that the “actual course of dealing conformed with the  
21 terms of the contract” and the plaintiff moved out of the forum state to perform the  
22 contract).

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24 <sup>3</sup> Moreover, “although physical presence in the forum is not a prerequisite to jurisdiction, physical entry  
25 into the State—either by the defendant in person or through an agent, goods, mail, or some other  
means—is certainly a relevant contact.” *Walden*, 571 U.S. at 285 (internal citations omitted) (citing  
26 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985) and *Keeton v. Hustler Magazine, Inc.*, 465 U.S.  
770, 773-74 (1984)). Not only was Plaintiff physically present in California while she was acting as the  
27 CEO, *i.e.*, an agent of Defendant, but Defendant also maintains a physical office located in Los Angeles  
in which it employs other California residents. Plaintiff alleges that Defendant’s officers, including  
28 Defendant’s former CEO, visited California for a prolonged period to recruit Plaintiff. This further  
establishes that Defendant purposefully directed activity at and availed itself of California.

1           Despite the employment agreement stating that the job location was intended  
2 to be Melbourne, Australia, the Parties explicitly contemplated that Plaintiff would  
3 work in California from September 22, 2021 until at least January 1, 2022 due to  
4 COVID-19 travel restrictions. The offer letter preceding the employment agreement  
5 states “[i]t is currently planned that you will be in Australia on a permanent basis on or  
6 around January 1, 2022” despite the employment term commencing on September  
7 22, 2021. (See MTD 1, Ex. A at 20, 30.) The offer letter also contemplates that Plaintiff  
8 might have continued to be employed in California beyond January 1, 2022, stating  
9 that given “current restrictions . . . we will both remain flexible to what is practical” and  
10 that the “[c]urrent employment arrangement . . . will continue until January 1, 2022  
11 (unless another date is mutually agreed).” (*Id.* at 20.) And, in fact, the actual course of  
12 dealing between the Parties was that Plaintiff performed work exclusively in California  
13 for her entire tenure. Though Defendant claims that Plaintiff’s employment occurred  
14 in California because of “Plaintiff’s unilateral decision to breach her contract and  
15 remain [in California],” this argument is belied by the above-quoted statements in the  
16 offer letter, Defendant’s proactive conduct to allow her to continue working in  
17 California, and the actual course of dealing. Despite Defendant’s framing,  
18 Defendant’s contacts with California were significantly more purposeful and  
19 substantial than those in *Shelhorst* and *Sarkis*.

## ii. Relation of the Claims to the Forum Related Activity

21 Next, the claims brought by the plaintiff must arise out of or relate to the  
22 defendant's contacts to the forum in order for the court to exercise jurisdiction. *Ford*  
23 *Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 361-62 (2021). A "strict  
24 causal relationship is not required" to establish relation; instead there must only be a  
25 "connection" between the forum related activity and the injury claimed. *Id.*

26 Here, there is a sufficient relationship because “[t]he defendants’ contacts with  
27 California resulted from the employment relationship, and the plaintiff’s claims arise  
28 out of the relationship.” *Franey v. Am. Battery Sols. Inc.*, No. 22-CV-03457-LB, 2022

1 WL 4280638, at \*10 (N.D. Cal. Sept. 15, 2022). Plaintiff alleges that it is while she was  
2 performing work for Defendant in California that Defendant carried out the acts giving  
3 rise to her claims, including engaging in gender discrimination and retaliation, and  
4 wrongfully terminating her. Plaintiff claims that during the course of her employment,  
5 Defendant discriminated against her based on her gender, and that she complained  
6 about that discrimination. She also alleges that she reported her belief that  
7 Defendant was engaged in unlawful activity, including selling defective products in  
8 California, making false representation to investors, and allowing insider trading. It  
9 was in response to these complaints, made in the course of her employment, that she  
10 was allegedly retaliated against and wrongfully terminated.

11 Employing an individual in the forum state provides a sufficient nexus to an  
12 adverse employment action claim. See, e.g. *Mercado*, 2015 WL 13783452, at \*4  
13 (finding that the plaintiff's claims of discrimination and wrongful termination arose out  
14 of remotely employing the plaintiff in California, and terminating the plaintiff in  
15 California); *Franey*, 2022 WL 4280638, at \*10 (finding that the alleged sexual  
16 harassment and retaliation arose out of defendant's contacts with California where  
17 defendant employed plaintiff remotely in California, even though some of the alleged  
18 sexual harassment occurred in Michigan); *Alexis v. Rogers*, No. 15CV691-CAB-BLM,  
19 2016 WL 11707630, at \*10 (S.D. Cal. Feb. 26, 2016) (finding a sufficient nexus where  
20 defendant virtually employed plaintiff in California and sexually harassed her during  
21 her employment, despite the fact that some sexual harassment occurred in person in  
22 New York, Alabama, and Colorado during business trips). This case presents an even  
23 stronger connection than those listed because Plaintiff's employment occurred  
24 exclusively in California, and she suffered all of the alleged discrimination, retaliation,  
25 and termination in California.

26 Defendant attempts to argue that the alleged conduct was carried out by  
27 individuals not physically present in California, and so the injury did not arise out of  
28 conduct "in" California. This is a distinction without a difference. Digital or remote

1 contacts are sufficient to create personal jurisdiction where, as here, that digital  
2 conduct is aimed at and felt within the state. See *D.light Design, Inc. v. Boxin Solar*  
3 Co., No. 13-CV-05988- EMC, 2015 WL 7731781, at \*2 (N.D. Cal. Dec. 1, 2015) ("Courts  
4 that have interpreted *Walden* in the context of virtual contacts have generally found  
5 personal jurisdiction over defendants who conduct interactive online activities with  
6 forum residents or direct business to the forum state . . .").<sup>4</sup> Discrimination and  
7 retaliation, even if done remotely, are purposeful contacts which gives rise to injury in  
8 the forum where the contact occurs.

### 9                   **iii.      Fair Play and Substantial Justice**

10               Even if the Plaintiff has established the first two prongs of the test, the court  
11 must still determine that the exercise of jurisdiction comports with fair play and  
12 substantial justice. The court may consider "(1) the extent of the defendant's  
13 purposeful interjection into the forum state's affairs; (2) the burden on the defendant  
14 of defending in the forum; (3) the extent of conflict with the sovereignty of the  
15 defendants' state; (4) the forum state's interest in adjudicating the dispute; (5) the  
16 most efficient judicial resolution of the controversy; (6) the importance of the forum to  
17 the plaintiff's interest in convenient and effective relief; and (7) the existence of an  
18 alternative forum." *Terracom v. Valley Nat. Bank*, 49 F.3d 555, 561 (9th Cir. 1995).  
19               However, it is the defendant's burden to make a "'compelling case' that the exercise of  
20 jurisdiction would not be reasonable." *Schwarzenegger*, 374 F.3d at 802 (quoting  
21 *Burger King*, 471 U.S. at 476-78)).

22               Despite having this burden, Defendant has explicitly chosen to not present an  
23 argument stating, in full, "[b]ecause Plaintiff has not made a *prima facie* showing of  
24 jurisdiction by establishing purposeful availment or purposeful direction and  
25 relatedness, Atomos does not need to address whether the exercise of jurisdiction

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26               <sup>4</sup> In addition, Plaintiff alleges that her termination was due, in part, to her reports that Defendant had  
27 engaged in unlawful conduct while doing business in California. (FAC ¶ 103.) This too provides a  
28 sufficient nexus between the Defendant's business contacts with California and Plaintiff's retaliation and  
wrongful termination claims related to whistleblowing.

1 would be fair.”<sup>5</sup> (MTD 1 at 13.) This is far from a “compelling case.” Because the  
2 Court has determined that Defendant made numerous, purposeful, contacts with  
3 California, and is alleged to have violated California employment laws against the  
4 Plaintiff who resided in California during her entire employment, the Court finds that it  
5 is fair and just to exercise personal jurisdiction over Defendant.

6 Accordingly, Defendant’s Motion to Dismiss for Lack of Personal Jurisdiction is  
7 DENIED.

### 8 **III. Motion to Dismiss for Forum Non Conveniens**

9 Defendant Atomos Limited’s Motion to Dismiss for Forum Non Conveniens,  
10 which Defendant Atomos, Inc. joins, asserts that Australia is the proper forum for  
11 Plaintiff’s claims.

#### 12 **A. Legal Standard**

13 A motion to dismiss for forum non conveniens is not governed by the rules of  
14 civil procedure; rather “[a] district court has discretion to decline to exercise  
15 jurisdiction in a case where litigation in a foreign forum would be more convenient for  
16 the parties.” *Lueck v. Sunstrand Corp.*, 236 F.3d 1137, 1142 (9th Cir. 2001) (citing *Gulf*  
17 *Oil Corp. v. Gilbert*, 330 U.S. 501, 504 (1947)). In deciding a motion for forum non  
18 conveniens, the court must examine: “(1) whether an adequate alternative forum  
19 exists, and (2) whether the balance of private and public interest factors favors  
20 dismissal.”<sup>6</sup> *Id.* (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 (1981); *Gulf Oil*,  
21 330 U.S. at 507-09; *Ceramic Corp. of America v. Inka Maritime Corp.*, 1 F.3d 947, 949  
22 (9th Cir. 1993); and *Lockman Found. v. Evangelical Alliance Mission*, 930 F.2d 764, 767  
23 (9th Cir. 1991)). Dismissal for forum non conveniens should only be granted in  
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25 <sup>5</sup> Defendant also failed to present any argument on fairness in its reply brief. (See Reply to MTD 1 (ECF  
26 No. 10).)

27 <sup>6</sup> The Ninth Circuit also requires the court to make a choice of law determination where the case  
28 involves law which “mandat[e] venue in the United States district courts.” *Id.* at 1148 (quoting *Creative  
Tech., Ltd. v. Aztech Sys. Pte., Ltd.*, 61 F.3d 696, 700 (9th Cir. 1995)). Otherwise, the choice of law  
determination carries little weight and is unnecessary. See *id.* Here, there is no potentially forum-  
determinative law, so the court does not need to make a choice of law determination at this juncture.

1 "exceptional circumstances." *Ravelo Monegro v. Rosa*, 211 F.3d 509, 512 (9th Cir.  
 2 2000).

3 **B. Discussion**

4 The Court finds that the first factor is met as Australia would provide an  
 5 adequate alternative forum. "[A] foreign forum will be deemed adequate unless it  
 6 offers no practical remedy for the plaintiff's complained of wrong" and the defendant  
 7 is amenable to service of process in that forum. *Lueck*, 236 F.3d at 1143-44.  
 8 Australia is a common law jurisdiction which has a robust legal system. Plaintiff does  
 9 not contest that Australia provides sufficiently similar employment protections and  
 10 remedies as California, and instead objects to the adequacy of the forum because she  
 11 would be required to split her claims and pursue intermediary dispute resolution  
 12 procedures. (See Decl. of Bruce James Heddle ("Heddle Decl.") (ECF No. 11-1) at 3;  
 13 Opp'n to MTD 2 at 8.) That a forum is more inconvenient does not, however, make it  
 14 inadequate.

15 However, despite Australia providing an adequate forum, the balance of  
 16 factors, discussed below, do not weigh in favor of dismissal. Where, as here, the  
 17 plaintiff is a domestic plaintiff<sup>7</sup> suing a foreign defendant, there is a "strong  
 18 presumption in favor of [the] domestic plaintiff's forum choice." *Ravelo*, 211 F.3d at  
 19 513. In these cases, dismissal is generally only appropriate where the plaintiff  
 20 "chooses a forum with little or no relation to either the defendant or the action." *Id.* at  
 21 512. "[U]nless the balance is strongly in favor of the defendant, the plaintiff's choice of  
 22 forum should rarely be disturbed." *Gulf Oil*, 330 U.S. at 508. Defendant has not  
 23 shown that the public and private factors outweigh Plaintiff's convenience of suing in  
 24 her own forum for conduct that occurred entirely within that forum.

25 The private factors the court should consider are "(1) the residence of the  
 26

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27 <sup>7</sup> Although Defendant alleges that Plaintiff is an Australian citizen, Plaintiff asserts that she is also a U.S.  
 28 Citizen, was at all relevant times a resident of California, and continues to reside in California. (FAC ¶  
 6.)

1 parties and the witnesses; (2) the forum's convenience to the litigants; (3) access to  
2 physical evidence and other sources of proof; (4) whether unwilling witnesses can be  
3 compelled to testify; (5) the cost of bringing witnesses to trial; (6) the enforceability of  
4 the judgment; and (7) 'all other practical problems that make trial of a case easy,  
5 expeditious and inexpensive.'" *Lueck*, 236 F. 3d at 1145. The public interest factors  
6 are "(1) local interest of lawsuit; (2) the court's familiarity with governing law; (3)  
7 burden on local courts and juries; (4) congestion in the court; and (5) the costs of  
8 resolving a dispute unrelated to th[e] forum." *Id.* at 1147.

9 Defendants assert that the following facts weigh in favor of the alternate forum:  
10 (1) the majority of the pertinent witnesses reside in Australia; (2) California is extremely  
11 inconvenient for Defendants; (3) all relevant documents are located in Australia; (4)  
12 compelling witnesses will be difficult and time consuming; (5) bringing witnesses to  
13 trial will be difficult; (6) a judgement may not be enforceable in Australia; (7) Australia  
14 has the greatest interest in rectifying any of the employment or securities issues raised  
15 by Plaintiff; (8) the Court and the jury will be unfamiliar with Australian law; and (9)  
16 resolving the claims will be costly and burdensome to the Court. (MTD 2 at 6-15.)

17 The location of Defendant Atomos Limited and many of the relevant witnesses,  
18 and the burden and cost of travel from Australia to California, weigh most heavily in  
19 favor of the Defendants. The Court acknowledges the significant time burden and  
20 monetary expense Defendants will incur to travel and bring witnesses for trial.  
21 However, the Court also recognizes that Defendant Atomos, Inc. is based in Oregon,  
22 and that Defendant Atomos Limited conducts regular business in California, maintains  
23 an office in Los Angeles, California, and has sent officers to California for business  
24 matters in the past (including to recruit Plaintiff). Further, as a technology company,  
25 Atomos Limited likely possesses adequate technological capability to conduct most of  
26 the litigation remotely, including discovery, depositions, and court hearings.  
27 Defendant has secured local counsel who is capable of attending in-person court  
28 hearings, and though the Court generally prefers in-person hearings, it is willing to

1 conduct hearings remotely when necessary for the convenience of Defendants.  
2 Further, if these claims were tried in Australia, the burden and expense of travel would  
3 merely be shifted to Plaintiff who is a current California resident, and Plaintiff's  
4 witnesses who reside in the United States. Plaintiff, as an individual, likely has fewer  
5 resources than Defendants, and so the burden will be even greater to Plaintiff if her  
6 claims are brought in Australia. *Cf. Decker Coal Co. v. Commonwealth Edison Co.*,  
7 805 F.2d 834, 843 (9th Cir. 1986) (denying a motion to transfer where transfer would  
8 "merely shift rather than eliminate the inconvenience").

9 Defendants maintain that a judgement would be unenforceable under the  
10 Australian Corporations Act. (See Heddle Decl. at 4.) Under the Corporations Act,  
11 any "benefit" given to an employee in connection with their termination must be  
12 approved by a corporation's shareholders; however, this requirement does not apply  
13 to court ordered judgements. (*Id.*) Defendant's expert has stated that it is unclear  
14 whether the term "court" includes courts of foreign jurisdiction or only Australian  
15 courts, and that there exists no decision addressing that question. (*Id.*) Plaintiff has  
16 provided the declaration of a rebuttal expert who argues that the term "court" in the  
17 relevant section means any court, including courts of foreign jurisdiction, in contrast to  
18 the terms "Court" and "court of summary jurisdiction" which elsewhere in the act are  
19 expressly defined as Australian courts only. (See Decl. of Mark Sehler (ECF No. 15-2)  
20 at 3.) This Court cannot dismiss Plaintiff's claims based on Defendants' expert's  
21 speculation that "court" may not include courts of foreign jurisdiction, especially in the  
22 face of a compelling alternate interpretation. Further, as Plaintiff noted in her  
23 opposition, Plaintiff claims that Defendant Atomos, Inc., a U.S. corporation, is the alter  
24 ego of Defendant Atomos Limited, and that a judgement against Atomos, Inc. in the  
25 United States will be enforceable regardless of Australian law. (See Opp'n to MTD 2  
26 at 16, n.6.)

27 The other factors cited by Defendants are not compelling. First, though  
28 Defendants maintain that all of the relevant documents are located in Australia,

1 Plaintiff's employment was carried out remotely, and electronic documents will  
2 primarily be at issue. Defendant has not provided examples of potentially relevant  
3 non-electronic, physical evidence, stating only that its files and servers are located in  
4 Australia. (MTD 2 at 8.) To the extent that physical evidence is relevant, it will likely be  
5 very minimal. Second, though Defendants make much of the Court's unfamiliarity with  
6 Australian securities law, Plaintiff's claims all arise under California employment law,  
7 and Australian law is only relevant insofar as Plaintiff must establish that she sincerely  
8 believed that the law had been violated. (See Cal. Lab. Code § 1102.5.) Neither the  
9 Court, nor the jury, will need to determine that the law was in fact violated, or resolve  
10 any other substantive issue of Australian law. Finally, it is clear that California has the  
11 strongest interest in resolving Plaintiff's employment claims, and upholding California  
12 employment law, considering that Plaintiff was employed exclusively in California and  
13 never employed in Australia. See Cal. Lab. Code § 925 (evidencing a strong interest  
14 in applying California labor law to employment occurring primarily in California).

15 At bottom, Defendants have not made a great enough showing of  
16 inconvenience to offset Plaintiff's forum choice. The Court accordingly DENIES the  
17 Motion to Dismiss for Forum Non Conveniens.

18 **IV. Conclusion**

19 For the above reasons, IT IS HEREBY ORDERED that Defendants' Motions to  
20 Dismiss, ECF Nos. 6 and 11, are DENIED. Additionally, Defendants' Motion to Stay,  
21 ECF No. 34, is DENIED as moot.

22 IT IS SO ORDERED.  
23

24 Dated: March 11, 2024

  
25 Hon. Daniel J. Calabretta  
26 UNITED STATES DISTRICT JUDGE

27 DJC2 – McGechie22cv01812  
28